

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

M&K CHEMICAL ENGINEERING
CONSULTANTS, INC.,

Plaintiff,

vs.

MALLINCKRODT INC. and TYCO
HEALTHCARE RETAIL GROUP,
INC.,

Defendants.

Case No. 4:08CV1194 CDP

MEMORANDUM AND ORDER

On August 20, 2008, Defendants Mallinckrodt Inc. and Tyco Healthcare Retail Group, Inc. filed a request for leave to withdraw their previously filed notice of removal. For reasons stated in the request, I will grant Defendants leave to withdraw, and will remand the case.

Plaintiff M&K Chemical Engineering Consultants, Inc. has requested fees and costs incurred in preparing and filing motions and affidavits in response to Defendants notice of removal. Under 28 U.S.C. § 1447(c), an order remanding a case “may require payment of just costs and any actual expenses, including attorney’s fees, incurred as a result of the removal.” As the statutory language indicates, such an award is to be made at the court’s discretion. *Martin v. Franklin*


Capital Corp. 546 U.S. 132, 141 (2005). In general, a district court may award attorney's fees where the removing party had no "objectively reasonable basis" for removal. *Id.* In making this determination, the key factor is the propriety of the defendant's removal. *Lytle v. Lytle*, 982 F. Supp. 671, 674 (E.D. Mo. 1997) (citations omitted). The statute does not require a finding of bad faith as a prerequisite to an award of attorney's fees. *Id.*

An award of attorney's fees is warranted in this case. Defendants' basis for removal was clearly improper, for reasons stated in Defendants' request for withdraw and remand. While this error was not made in bad faith, Defendants had no objectively reasonable basis for seeking removal.

Accordingly,

IT IS HEREBY ORDERED that Defendants' motion to withdraw notice of removal [#7] is granted and the Clerk of the Court is directed to REMAND this case to the Circuit Court of the City of St. Louis, Missouri, from which it was removed.

IT IS FURTHER ORDERED that Plaintiff's motion for attorney's fees in the amount of \$1250 [#8] is granted.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of August, 2008.